



Re: Hearing #6 On Competition and Consumer Protection in the 21st Century

Comment of the Consumer Advocacy & Protection Society (CAPS) at University of California, Berkeley, School of Law

Dear Federal Trade Commission:

The Consumer Advocacy and Protection Society is a student-run organization at the University of California, Berkeley, School of Law aimed at promoting consumer law and consumer protection. CAPS is pleased to submit this comment to the Federal Trade Commission regarding the increasingly prevalent, inherently misleading practice of hotels imposing “resort fees” on their guests. By omitting resort fees from posted room rates per night, hotels increase consumer search costs, causing them to make incomplete and often flawed purchasing decisions.¹

In the long run, hotel resort fees harm the potential big data has to foster competition and innovation. By obscuring what services consumers are paying for, hotel resort fees prevent big data companies from gathering information on consumer preferences that hotels could use to create better, value add services. CAPS therefore respectfully asks that the FTC exercise its authority under Section 5 of the Federal Trade Commission Act to present the full cost of nightly room fees in a single advertisement.

The Harm Caused by Resort Fees is Substantial

¹ Mary W. Sullivan, Fed. Trade Comm’n, *Economic Analysis of Hotel Resort Fees 5* (2017), available at https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf.

Hotel resort fees have been identified as problematic by the FTC in the past² and are anticipated to become more even more so.³ In November 2012, the FTC identified and warned twenty-two hotels about “deceptively low estimates of what consumers expect to pay for their hotel rooms”; however, the Commission enacted no enforcement measures or rules at the time.⁴ Since 2012, the practice of imposing resort fees has only become more entrenched in the hospitality industry.⁵ Consumers paid an estimated \$2 billion in hotel resort fees in 2015, 14% higher than in 2014, and the percent of U.S. hotels charging hotel resort fees increased by 7% in 2016, to 42% in 2017.⁶ These numbers are projected to increase. According to Bjorn Hanson of NYU’s Center for Hospitality and Tourism, total fees and surcharges collected by hotels in the U.S. are projected to reach a high of \$2.93 billion in this year, and reach another record high in 2019. Considering these trends and the increasing consumer reliance on online bookings⁷, the FTC’s current recommendation for travelers to call ahead to ask about resort fees and other mandatory charges is likely not enough to adequately protect consumer interests.⁸

Hotel Resort Fees Mislead Consumers and Affect Their Behavior

While hotel resort fees are disclosed to consumers, these disclosures are often not enough to inform consumers as to what they are being charged *for*.⁹ More problematically, resort fees force consumers to remember each separate cost and engage in additional calculations.¹⁰ Research has shown that this causes consumers to make more “buying mistakes” such as terminating their search prematurely, failing to adequately consider new pricing information, and underestimating total price.¹¹ Furthermore, simply knowing of a hotel resort fee does not inform consumers as to what services they are paying for. For example, hotel resort fees are often charged as “facility fees” that do not break down what facilities consumers are paying for access to. Even if consumers are aware of resort fees, they lack the experience with them to avoid or negotiate them.¹²

The Benefits of Hotel Resort Fees are Not Outweighed by Costs, and Hotel Resort Fees are Reasonably Avoidable

The hotel industry has argued that resort fees allow hotels to (1) bundle services that would cost consumers more if sold individually and to (2) reduce commissions that hotels pay Online

² See generally, Hotel Pricing/Resort Fee Warning Letters from the Fed. Trade Comm’n to Various Businesses (Nov. 29, 2012 to Jul. 6, 2016), available at https://www.ftc.gov/system/files/documents/foia_requests/2016-01006_warning_letters_49_pgs.pdf.

³ See *id.*; Jane L. Levere, *Paying a ‘Resort Fee’ When You’re Not at a Resort*, N.Y. TIMES, (Oct. 22, 2018), <https://www.nytimes.com/2018/10/22/business/luxury-hotels-urban-areas-cities.html>.

⁴ Lauren Wolfe, *The Story*, KILL RESORT FEES (last visited Dec. 6, 2018), <http://killresortfees.com/thestory/>.

⁵ See Sullivan, *supra* note 1, at 2.

⁶ See Levere, *supra* note 3.

⁷ See Wolfe, *supra* note 4.

⁸ *Id.*

⁹ See Traveler’s United, *Hotel Resort Fee Infographic* (last visited Dec. 6, 2018), <https://www.travelersunited.org/hotel-resort-fee-infographic/>.

¹⁰ Sullivan, *supra* note 1, at 27.

¹¹ *Id.* at 16.

¹² *Id.* at 27.

Travel Agents (OTAs). Additionally, the industry claims that consumers either do not mind or prefer hotel resort fees over inclusive room rates.¹³ None of these claims are substantiated. First, consumers cannot effectively make decisions based on preferences if they do not know what services are being bundled.¹⁴ And, according to research, consumer preferences for hotel listings did not change when prices were presented separately.¹⁵ Second, hotel resort fees have no effect on the ability of hotels to negotiate commissions with OTAs.¹⁶ These negotiations occur on a regular basis and neither party's negotiating positions are affected by hotel resort fees.¹⁷ Third, empirical data show that consumers prefer inclusive room rates when given a choice.¹⁸ Reviews and surveys from consumers demonstrate that they feel "nickel and dimed" by hotels that use hotel resort fees.¹⁹ And, as a further indication of consumer discontent, there have been multiple lawsuits on the matter. In 2001, consumers filed a lawsuit against Hilton, Hyatt, and Starwood for imposing mandatory "energy surcharges" to their guest bills. In 2006, Wyndham settled an action that was brought by the Florida Attorney General regarding undisclosed automatic surcharges. Most recently, in December 2017, a class action was initiated against Marriott, Wyndham.²⁰

Given the significant concern consumers have expressed towards hotel resort fees and the limited evidence the hotel industry has been able to supply in justifying this practice, the FTC should take further action than it has in the past. Hotels can still achieve the stated goals for hotel resort fees by bundling the same resort fee services with the total room charge and by disclosing the break-down of total price separately.²¹ These changes would not only increase transparency to consumers but also allow them to make rational, informed decisions based on reasonable expectations.²² These alternative practices protect consumer interests while imposing little, if any, additional costs on the hotel industry.

Conclusion

Hotel resort fees are misleading and harm consumer interests to a degree that outweighs benefits to the hotel industry.²³ The FTC has identified the practice as problematic in the past but there have been limited, if any improvements since. In fact, quantitative data and consumer experience reports demonstrate that resort fees have already become a far more widespread

¹³ *Id.* at 30; *see also* Levere, *supra* note 3.

¹⁴ Sullivan, *supra* note 1, at 30.

¹⁵ *Id.*

¹⁶ *Id.* at 34.

¹⁷ *Id.*

¹⁸ *See generally*, Toni Repetti et al., *Pricing Strategies for Resort Fees: Consumer Preferences Favor Simplicity*, 27 Int'l J. Contemp. Hospitality Mgmt. 790 (2015) (finding that given the choice between a \$165 inclusive room rate or a room rate of \$140 + a \$25 resort fee, 67% of consumer respondents preferred the inclusive room rate, even though the total price was the same in both scenarios); *see also id.* at 30.

¹⁹ *Id.* at 1

²⁰ Elliot Mest, *Resort fees back in the spotlight due to Marriott, Wyndham lawsuits*, HOTEL MGMT., (Nov. 2, 2017), <https://www.hotelmanagement.net/operate/resort-fees-back-spotlight-due-to-marriott-wyndham-lawsuits>.

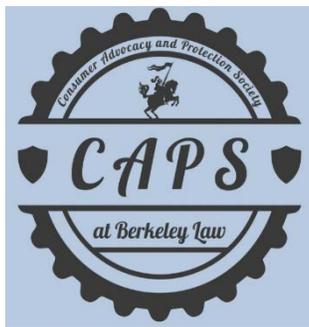
²¹ Sullivan, *supra* note 1, at 1.

²² If a seller doesn't fully disclose all material info, consumers assume the worst about whatever the seller doesn't disclose, reducing consumers' willingness to pay. Sullivan, *supra* note 1, at 5.

²³ *Id.*

problem – and without concerted action by the FTC, are almost certain to become still more pervasive.

The Commission should take clear and focused protective action to contain this anti-consumer practice before it becomes too entrenched to change. By preventing consumers and data aggregators from accessing information on cost breakdowns, hotel resort fees limit the applicable benefits big data has on developing innovation in the hotel industry. Hotel resort fees prevent consumers from knowing what they are paying for, prevent researchers from knowing what consumers value, and prevent hotels from developing better services that allow them to compete on merits. Accordingly, the Commission should require hotels to disclose the total cost of nightly resort fees within a single advertisement.



Sincerely,

Stella Chang
Consumer Advocacy and Protection Society
University of California, Berkeley, School of Law
Class of 2020
stllchang@berkeley.edu
caps@law.berkeley.edu
<http://consumer.berkeley.edu>